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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,577

03/15/2004

Marc Tillis

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EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/800,577	Applicant(s) TILLIS, MARC	
	Examiner Anthony Weier	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) 7,8,14-16 and 44-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-13, 17-43, and 53-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112, 1st Paragraph

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-6, 9-13, 17-43, and 53-68 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The independent claims of the instant invention all now recite "egg based material has a yellow-white appearance of an egg, an egg-like taste and an egg-like consistency" which does not appear to have support in the original specification. Although it is true that the original specification recites that the egg-based material have a "fluid, flowable consistency" (see original claim 54), modified flavor, texture, and appearance (e.g. paragraph 15) and that the prior art does not have the same "taste, texture, or visual appearance of freshly cooked eggs" (paragraph 7), there is no recitation that the yellow-white appearance, taste, and consistency of the invention is "egg-like." Although the prior art failed to provide such an egg, it does not mean, nor is it recited or suggested in the other portions of the original specification that the instant invention does achieve such degree of mimic to freshly cooked eggs. Perhaps a portion the organoleptic characteristics of the instant invention do achieve same or are a step

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toward achieving something approaching freshly cooked eggs, there appears to be no clear support to arrive to such conclusion.

This is a new matter rejection.

Claim Rejections - 35 USC § 112, 2nd Paragraph

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-6, 9-13, 17-43, and 53-68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Said claims are indefinite in that it is not clear as to the scope of what is "egg-like". Moreover, what kind of egg? All egg forms? Cooked egg? Raw egg? Poached egg? Etc. Moreover, the reference to "yellow-white appearance" is indefinite in that it is not clear whether this refers to the ratio of each color? Or the intensity of the "yellow" or contrast between the two?

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6, 9-13, 17, 18, 22-26, 28, 29, 33-38, 41, 43, 53-56, 59-64, 67, and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 2001-45959 (JP '959).

JP '959 discloses a food comprising whole eggs (inherently fluid and flowable; e.g. 45%) which are mixed with a water absorbent thickener (i.e. bread crumb; e.g. 1%), wheat flour (including starch which would inherently provide stabilizing), water (or, in the alternative, milk), and then pieces of supplemental food such as fruit, chocolates, raspberry puree which are also mixed homogeneously throughout the food wherein the mixed ingredients are then baked. It is expected that the bread crumbs would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbance is modest. The egg material will coagulate during baking and it is expected that due to the presence of the starch therein that said product would exhibit some freeze/thaw stability.

The claims now further call for said egg-based material having a yellow-white appearance of an egg, an egg-like taste, and an egg-like consistency. However, it is considered inherent that the egg material of the prior art which is largely made of egg would consist of a color that falls within the yellow-white mixed color of an egg which had been treated in a similar manner. Moreover, it would have been obvious to have applied the egg consistency and egg taste of an egg not containing said thickener and supplemental food pieces by minimizing the amounts of such extra ingredients, such that said egg product is essentially just egg material. It should be further noted that the instant claims are silent regarding the particular type of egg that is being mimicked and whether said comparison pertains to eggs that are alone or egg material employed in a similar product, for example, that does not include said thickener or supplemental food throughout.

Claim Rejections - 35 USC § 103

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7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 22-26, 28, and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over by JP 63-216455 (JP '455).

JP '455 discloses a process of preparing a food wherein an egg solution is blended with a cooked water-absorbent material (bread crumbs) wherein same is heated and coagulated. It is expected that the bread crumbs would possess the particular absorbing ability as set forth, for example, in claim 26 as such degree of absorbance is modest.

The claims further call for the particular amounts of egg and water absorbing thickener. Although, the amount of egg material would naturally fall within the range of the instant claims, the recited amount of water absorbing thickener (i.e. bread crumbs) in JP '455 is higher than that called for in the instant claims. However, it should be noted that JP '455 describes this amount of water absorbing thickener as being “preferably” used, Thus leaving open the use of other amounts of water absorbing thickener. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at the amount of water absorbing thickener as called for in the instant claims as a result effective variable depending on, for example, the particular degree of bread texture desired in the final food product.

The claims now further call for said egg-based material having a yellow-white appearance of an egg, an egg-like taste, and an egg-like consistency. However, it is

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considered inherent that the egg material which is largely made of egg would consist of a color that falls within the yellow-white mixed color of an egg which had been treated in a similar manner in the absence said thickener and at least some of the supplemental food pieces. Moreover, it would have been obvious to have applied the egg consistency and egg taste of an egg not containing said thickener and supplemental food pieces by minimizing the amounts of such extra ingredients, such that egg product is essentially just egg material. It should be further noted that the instant claims are silent regarding the particular type of egg that is being mimicked and whether said comparison pertains to eggs that are alone or egg material employed in a similar product, for example, that does not include said thickener or supplemental food throughout.

9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001-45959.

The claims further call for the particular amount of stabilizer used. However, such determination would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further obvious to have arrived at such amounts through routine experimental optimization.

10. Claims 19, 20, 30-32, 39, 40, 57, 58, 65, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 63216455 taken together with either one of Hudson et al (U.S. Patent No. 7264840), Wiker et al (U.S. Patent No. 4421770) or Rapp et al.

The claims further call for batter and/or breading on the outside of the egg product wherein said food is fried. However, it is well known to batter/bread and then

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fry egg products as taught, for example, by any one of Hudson et al, Wiker et al, and Rapp et al (see examples in each). It would have been obvious to one having ordinary skill in the art at the time of the invention to have batter and/or breaded the product of JP '455 and frying same as a matter of preference depending on the particular texture, appearance, and flavor desired in the final product.

Applicant's Arguments

11. Applicant's arguments filed 12/31/07 have been fully considered but they are not persuasive and have been addressed in view of the rejections as set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
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Art Unit 1761

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Primary Examiner, Art Unit 1794

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September 26, 2008

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